IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1102 of 1996

With

CRIMINAL APPEAL No. 33 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RANCHHOD @ JESAL HARJI GALANI PATEL - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :

Criminal Appeal No.1102 of 1996

MR NITIN M AMIN for Appellant
MR RC KODEKAR, APP for respondent

Criminal Appeal No.33 of 1997

MR RC KODEKAR, APP for appellant
MR NITIN M AMIN for respondent

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 08/12/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1. Criminal Appeal No.1102 of 1996 has been filed by the present appellant-original accused against the judgment and order dated 14-10-1996 delivered by the learned District and Sessions Judge, Jamnagar, convicting and sentencing him in Sessions Case No.110 of 1995 to suffer for life for the offence punishable under Sec.302 of IPC.

2. Criminal Appeal No.33 of 1997 has been filed by the State for enhancement of sentence awarded by the learned District and Sessions Judge, Jamnagar, in Sessions Case No.110 of 1995.

3. As both Criminal Appeal No.1102 of 1996 and Criminal Appeal No.33 of 1997 arise from the same judgment and order, they were heard together and are being disposed of by this

common judgment.

4. Short facts of the prosecution case are that on 7-7-1995, the accused along with his two sons namely, Ravi aged about 5 years and Kalpesh aged about 4 years went to a temple of Goddess Khodiyar situated on the bank of Rajvad Kalavadi river, Kalavad town. At about 3.45 p.m., the accused was praying to Goddess Khodiyar by holding both the sons and shouting “give me Rs.5.00 lakhs, give me Rs.5.00 lakhs”. He thereafter held his elder son Ravi from his leg and trashed his head on the floor of the temple continuously as a result of that, Ravi succumbed to his injuries. Immediately thereafter, he held his another son Kalpesh aged about 4 years also and repeated the same act as a result of that, Kalpesh also succumbed to the injuries. During that period, the complainant, Babubhai Arjanbhai, who was sleeping very near to the temple under a tree, on hearing the shouting, rushed to the temple and saw both the sons of the accused having succumbed to

the injuries and accused was trying to push his head on the floor and, therefore, Babubhai shouted for help. Witness called Pujari Kangiri Ranchhodgiri of the said temple and on seeing the same, Pujari came out from the temple and shouted for help. The agriculturists who are working in their field very near to the temple came there. Thereafter Babubhai went to Kalavad Police Station and lodged the complaint and it has been registered as Kalavad Police Station C.R.No.I-55 of 1995 by Police Officer In-Charge, Shivdas Ramdas Patil and handed over the investigation to Senior Head Constable, Mr.Rupchand. He prepared inquest panchnama as well as panchnama of scene of offence in presence of panchas and also made arrangements to send the body of both the minor sons for post mortem. He also took custody of the appellant accused. Further investigation was started by Police Officer, Kantilal Naranbhai Patel. He collected muddamal in presence of panchas and sent to

FSL with forwarding letter. On receipt of FSL and post mortem reports, same were kept in the investigation file. He also collected injury certificate, etc. At the end of investigation, charge sheet was submitted into the Court of learned J.M.F.C., Kalavad on 13-8-1995.

5. As case against the accused was triable exclusively by the Court of Sessions, learned Judicial Magistrate (First Class), Kalavad, committed the case to the Court of Sessions, Jamnagar, for trial on 8-9-1995 where it was numbered as Sessions Case No.110 of 1995 and placed in the Court of learned Sessions Judge, Jamnagar. The accused appeared before the learned Sessions Judge and charge was framed against the accused at Ex.3 for offences punishable under Secs.302 and 309 of IPC. The charge was read over and explained to the accused. Accused pleaded not guilty to the said charge and prayed for trial.

6. To prove the charge against the accused, the

prosecution examined following witnesses:

1)Babubhai Arjanbhai Kapuriya, P.W.1, Ex.7, the complainant and eye witness of the incident.

2)Kangiri Ranchhodgiri Goswami, P.W.2, Ex.9,the Pujari of Goddess Khodiyar Mata temple where alleged incident has taken place and who immediately came to the place on hearing the shout.

3)Dr.R.G.Dutt, the doctor who performed post mortem on the dead bodies of minor Ravi and Kalpesh and also prepared the post mortem notes Exs.13 and 14 respectively.

4)Manji Shamji, P.W.3, Ex.18, the person who is having the agricultural field (vadi) very near to Khodiyar Mata Temple and who went to the temple on hearing the shout. According to this witness, when he reached there, both the minor sons were lying dead in the temple and even accused was also there.

5)Nathalal Shamji Chovatiya, P.W.5, Ex.19, another person who is also having his agricultural field (vadi) very near to

Khodiyar Mata Temple and who also went to the temple on hearing the shout. According to this witness also, when he reached there, both the minor sons were lying dead in the temple and even accused was also there.

6)Jivanbhai Kanjbhai Khanpara, P.W.6, Ex.20, Circle Inspector who prepared map of scene of offence on the basis of panchnama Ex.21.

7)Vittalbhai Vallabhbhai Vadi, P.W.7, Ex.23, the panch of inquest panchnama of deceased Ravi and Kalpesh. He has not suported the say of the prosecution and has been declared as hostile.

8)Vashram Khoma Khara, P.W.8, Ex.24, the panch of cloth of accused seized by way of panchnama Ex.25.

9)Vittal Shamji Sutariya, P.W.9, Ex.27, the panch of inquest panchnama of victims Ravi and Kalpesh. Through this witness, prosecution has established inquest panchnamas Exs.28 and 29 and also panchnama of muddamal tiles Ex.30 seized by the police.

10)Ashraf Mahmad, P.W.10, Ex.31, the panch of

panchnama of cloth wore by the deceased at the time of incident and same has been seized by way of panchnama Ex.32 on production by concerned Police Constable.

11)Shivdas Ramdas Patil, P.W.11, Ex.33, PSO of Kalavad Police Station, who was on duty on 7-7-1995 and who recorded entries Nos.19 and 34 in station diary at page 29. He is also the person who recorded complaint of the complainant-Babubhai.

12)Kantilal Naranbhai Patel, P.W.12, Ex.35, PSI of Kalavad Police Station who took over investigation, completed it and submitted the charge sheet.

The prosecution also relied on various documentary evidence namely, FIR Ex.8; map of scene of offence Ex.22, arrest panchnama of accused along with seizure Ex.25; inquest panchnamas Exs.28 and 29 respectively; recovery panchnama of clothes recovered from the dead bodies of deceased Ravi and Kalpesh Ex.32; post mortem notes of deceased Ravi and Kalpesh, Exs.16 and 17 respectively, abstract

of station diary entry Ex.34, FSL reports Exs.39 and 40, serological report Ex.41, receipt issued by FSL Exs.42 to 44 and forwarding letter to FSL.

7. On submission of closing purshis by the prosecution, learned Sessions Judge recorded further statement of the accused under Sec.313 of the Code of Criminal Procedure qua incriminating question.

8. After hearing the learned counsel appearing for the respective parties, the learned Addl. Sessions Judge, Jamnagar, vide impugned judgment and order convicted the appellant-accused giving rise for the original accused to prefer Criminal Appeal No.1102 of 1996 for quashing and setting aside the judgment and order of conviction and sentence and for the State to prefer Criminal Appeal No.33 of 1997 for enhancing the sentence from life to capital punishment.

9. Heard at length learned counsel, Mr.Nitin Amin, on behalf of the appellant of Criminal Appeal No.1102 of 1996 as well as for the

respondent of Criminal Appeal No.33 of 1997 and learned APP, Mr.R.C.Kodekar, on behalf of the appellant-State in Criminal Appeal No.33 of 1997 as well as for the respondent-State in Criminal Appeal No.1102 of 1996.

10. Learned counsel for the original accused, Mr.Nitin Amin, has mainly taken us through the evidence of P.W.1, Babubhai Arjan Kapuriya, the person who was taking rest under a tree 50 feet away from the place of incident in the temple premises and who reached immediately to the place on hearing the shouts. He has seen that the accused was praying to Goddess by shouting, “giving me Rs.5.00 lakhs, giving me Rs.5.00 lakhs”. During that time, he held the legs of his elder son Ravi aged about 5 and thrashed him on the floor of the temple repeatedly. Thereafter, he took his second son Kalpesh aged about 4 years and repeated the same act. As a result of that, both the sons succumbed to the injuries there itself. Thereafter, he also pushed his head on the floor and he

tried to intervene. Since he could not do anything, he shouted for help and therefore Pujari who was staying in the temple premises also came there and he also shouted for help and, therefore, various persons of Kalavad Town working in their agricultural field which is very near to the temple at a distance of 100-200 feet also came there. Thereafter, he went to Kalavad Police Station and filed the complaint Ex.8 to that effect and the police started investigation. When this witness was cross examined, nothing contrary came out. The only material contradiction admitted by the witness is that when he went to the Police Station, he was not knowing the name of the appellant accused but he came to know later on. Learned advocate of the appellant-accused concentrated his arguments on that point. We will discuss later on in that respect.

11. Another material witness upon which reliance has been placed by the learned counsel for the appellant is P.W.No.2, Kangiri

Ranchhodgiri, Ex.9, who is the Pujari of the temple staying in the temple itself. Immediately on hearing shuts, he came out and deposed about the incident as has been deposed by P.W.No.1, Babubhai Arjan Kapuriya and, therefore, it is not required to be repeated again. He has fairly admitted in his cross examination that when he went to the temple, the accused had already thrashed both of his sons. He has also admitted in his cross examination that he went outside the temple and shouted for help but he had not talked either with the complainant or the accused at the relevant time. He has also categorically deposed and stuck to his version regarding presence of the complainant in the temple at the time when he reached there.

12. Simultaneously, learned counsel for the appellant, Mr.Amin has also taken us through the evidence of P.W.No.4, Manji Shamji, Ex.18. He is the person who was working at the relevant time in his agricultural field

which is at a distance of 500-600 feet away from the temple and after hearing the noise, he immediately went into the temple. When he entered inside, he saw both the boys lying dead in the temple and accused Ranchhod was also there. He has deposed that he knows accused Ranchhod and he identified him as the accused in the Court. He has deposed that till police came, he remained there in the temple.

13. Simultaneously he has also taken us through the oral evidence of P.W.No.5, Nathalal Shamji Chovatiya, Ex.19 who is also the person who went to the temple just like witness Manji Shamji. He has also categorically deposed that when he entered into the temple, both the sons were lying dead and accused Ranchhod was also there. He has also deposed that he knows Ranchhod because he is the son of his sister. He has also identified Ranchhod as the accused in the Court. He has also deposed that after arrival of police, he took Ranchhod along

with the police in the rickshaw.

14. Mr.Amin has also taken us through FIR Ex.8 and also through the relevant portion of the judgment to that effect. Mainly it has been argued on the basis of above referred evidence that the appellant has been falsely involved in the crime in question as though name of the accused was known to the complainant, he had not given his name in the FIR which, according to him, is the major contradiction. The complainant as well as other persons who went to the scene of offence are not eye witnesses. Presence of Pujari Kangiri Ranchhodgiri is also raising doubt as to whether he went at the place of offence as narrated by him or has been made a witness later on. In this regard, he has taken us through the evidence of persons working in the agricultural field who came there on shout being heard and argued that there is discrepancy regarding the facts narrated by Pujari as to whether he went to the agricultural field for calling them or

the witness reached the scene of offence on hearing shout. He has also argued that the way in which the prosecution has put the case is not believable or convincing. Nobody would kill his own sons in this fashion. In this regard, he has taken us through the evidence of various other witnesses namely, the doctor who performed the post mortem note, the inquest panchnama, panchnama of scene of offence and also FSL report and panchnama of search of the accused and seizure of cloth of appellant accused as well as of the deceased together with the FSL report. Not only that, the blood which has been found on the cloth wore by the accused tally with the blood which has been found from the tiles and on the cloth of the deceased. Still, however, it is argued by Mr.Amin that this cannot be said to be a case falling under Sec.302 of IPC but can be said to have happened in a spur of moment or at a bad moment which resulted into Sec.302 and, therefore, some sympathy is required to be shown.

15. Mr.Kodekar has also taken us through the above referred judgment and relevant evidence in detail and argued that it is a case wherein father has killed his two sons aged about five and four years respectively and looking to the way in which he has mercelessly killed in a cruel manner, it cannot be said to have been happened in a spur of moment. On the contrary, considering the cruel manner in which the murder having committed by the appellant, it is a case wherein no mercy is required to be shown but it is a case wherein death penalty only will meet the ends of justice.

16. We have given thoughtful consideration to the arguments advanced by the learned counsel for the respective parties. We have also gone through the evidence on record which have been shown to us by the learned counsel for the respective parties along with the reasoned judgment delivered by the court below.

17. We have also gone through the evidence of

complainant Babubhai, Pujari and two other witnesses namely Manji Shamji, P.W.No.3, Ex.18 and Nathalal Shamji P.W.No.5, Ex.19 who went to the scene of offence and all the four witnesses have deposed the same on material point regarding the way in which the incident has been taken place. Babubhai is the witness of incident and hence, his presence cannot be discarded nor can we say that he is a chance witness more particularly when his presence has been admitted by other witnesses who went there after hearing the shout, namely, Manji Shamji and other persons from the agricultural field including the Pujari.

18. Evidence on record shows that on hearing the shout, witness Babubhai went there and he saw the incident and narrated the same in detail and nothing has come out in his cross examination. His evidence is supported by the evidence of Pujari Kangiri Ranchhodgiri, Manji Shamji and Nathalal Shamji and there is no reason to disbelieve the say of all these witnesses because Nathalal and Manji

Shamji are having their agricultural field very near to the temple. Not only that, they are from the same town and Manji is the nearest relative of the accused and all went at the scene of offence and when they reached there, accused along with his two sons were lying in the temple premises. Merely because the complainant has admitted in his cross examination that he was not knowing the name of the accused as Ranchhod and hence, he has not given name in the complaint, the otherwise creditworthy testimony of the eyewitness cannot be discarded on that ground. It is not a contradiction which turtle the evidence of prosecution because custody of Ranchhod has been taken from the temple itself. Moreover, when the accused was being taken to the Police Station, the cloth wore by him was having blood stains. Not only that, he himself also received injury and Manji who accompanied Ranchhod in the rickshaw has categorically deposed that the accused and his sons were there in the

temple and both the sons were lying dead in the temple and Ranchhod was also there. Prosecution also gets support from the scientific evidence namely, FSL report showing that the cloth wore by the accused was also having blood stains which is further corroborated by the panchnama of seizure of cloth. Simultaneously, cloth wore by the victim was also found to have blood stains. Even the tiles seized from the temple was also having blood stains. Apart from that, FSL report tally with the blood group and, therefore also, the presence of accused is established by way of scientific evidence. Even inquest panchnama and post mortem note also support the say of the prosecution.

19. In view of the above, we are of the opinion that the prosecution is able to prove the case against the appellant accused beyond reasonable doubt and the way in which the incident has been taken place as narrated by the prosecution also does not show that it has taken place as a result of sudden

provocation or some material has been provided by two minor sons aged about five and four years to kill them. Therefore, according to us, the appeal filed by the appellant has no substance and the judgment and order of conviction and sentence delivered by the court below is required to be confirmed.

20. As far as Criminal Appeal No.33 of 1997 filed by the State for enhancement of sentence is concerned, we have also considered various aspects and we are of the opinion that keeping in mind the way in which the incident has been taken place and also looking to the evidence appearing on record, learned APP is not in a position to satisfy the conscience of the Court so as to indicate that it is a rarest of the rare case requiring imposition of capital punishment as a deterrent punishment. Apart from that, prosecution has not been able to prove the menace on the society and hence, we are of the view that no case is made out for

enhancement of sentence. Hence, the following final order is passed:

In the result, Criminal Appeal No.1102 of 1996 is dismissed. Judgment and order of conviction and sentence dated 14-10-1996 passed by the learned Sessions Judge, Jamnagar, in Sessions Case No.110 of 1995 are confirmed.

As far as Criminal Appeal No.33 of 1997 filed by the State for enhancement of sentence is concerned, same is also dismissed.

[R.P.DHOLAKIA,J.]

[M.D.SHAH,J.]

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